IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 301 OF 2006
IN
SUIT NO.357 OF 1991

M/s. United Builders & Developers. ..Plaintiff.

V/s.

Smt.Dhanubai Motiram Mhatre (since deceased) & Ors. ..Defendants.

And

M/s. Suvidha Developer Pvt.Ltd. ..Respondents.

Mr.Jayesh Bhatt for plaintiff.

Ms.Seema Sarnaik for respondents.

Mr.P.N.Vora for defendant Nos. 3 to 25 and 27 to 31.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 30, 2007.

P.C. :

1. Heard counsel for the parties. Perused the relevant pleadings.

2. By this application, multiple reliefs are claimed. In the first place, relief is for condoning delay in taking out application for setting aside and also to bring on record heirs and legal representatives of the deceased Nos. 2, 26 and 32. It is also prayed that the respondents named in the application be impleaded as defendant No.37 for the

reasons mentioned in the affidavit in support.

3. Having examined relevant pleadings, I am inclined to accept the argument of the applicant that there is sufficient cause in excusing the delay in taking out the present application and to set aside the abatement. The knowledge about the death of defendant Nos.2, 26 and 32 was on account of communication received by the plaintiff's advocate on 4th August, 2005. Immediately thereafter, the plaintiff took out Chamber Summons No.1163/2005 on 2/9/2005. That Chamber Summons however, was withdrawn on 13th February, 2006 with liberty to file fresh application. Present Chamber Summons has been filed on the basis of the said liberty to the plaintiff. The fact of death of defendant Nos. 2, 26 and 32 came to their knowledge only on 4th August, 2005 in view of the communication received by the advocate for the plaintiff. In that case, from the events that have unfolded thereafter, it is possible to accept that there is sufficient cause for showing indulgence to the plaintiff. The only argument of the counsel for the respondent is that the plaintiff had knowledge about the death of defendant No.2, as the representative of the plaintiff attended the prayer meeting of defendant No.2. The plaintiffs

however, have proceeded on denial. It is a word against word. There is nothing to substantiate the fact stated by the respondent on affidavit. In the circumstances, I am inclined to accept the request of the plaintiffs to condone the delay and set aside abatement and also to bring on record heirs and legal representative of the defendant Nos.2, 26 and 32.

4. In so far as relief relating to impleading respondent as defendant No.37 is concerned, that is opposed by the counsel for the respondent on the argument that the plaintiffs ought to have resorted to appropriate remedy on the basis of fact, which became known to the plaintiffs as back as in 1991, when the Notice of Motion No.4100 of 1991 was filed. It is however, not in dispute that the respondent is claiming through defendant Nos. 1 to 36. According to the respondent, he has been granted only development right in suit property. Be that as it may, to avoid multiplicity of proceeding and as respondent is indisputedly claiming through the defendant Nos.1 to 36, in the interest of justice, even prayer for impleading respondent as defendant No.37 will have to be allowed. As a consequence of this indulgence, the plaintiffs will be entitled to carry out necessary amendments in terms of the

schedule appended to this Chamber Summons.

5. At this stage, the counsel for the defendants submits that one of the plea taken by the plaintiffs that other heirs and legal representatives of defendant No.32 are already on record as the basis to condone the delay and set aside abatement is inappropriate. None of the defendants are the heirs and legal representatives of defendant No.32. For the reasons already recorded earlier, it is unnecessary to elaborate on this aspect. The Chamber Summons accordingly, succeeds.

6. Accordingly, Chamber Summons is made absolute in terms of prayer clause (a) to (e). Amendment to be carried out within three weeks from today. No order as to costs.